will be made as to whether expenditure therefor is warranted. Proceeds from the conversion or sale will be deposited to the credit of the General Post Fund. Funds on deposit in Personal Funds of Patients will be transferred to the General Post Fund. Any claims against the estate of the deceased veteran will be adjudicated and paid, if valid.

[33 F.R. 1073, Jan. 27, 1968]

§ 12.23 Recognition of valid claim against the General Post Fund.

Effective December 26, 1941, the assets of the estate of a veteran theretofore or thereafter deposited to the General Post Fund are subject to the valid claims of creditors presented to the Veterans Administration within 1 year from the date of death or otherwise as provided by any applicable law. Any heir, next of kin, legatee, or other person found to be legally entitled to the personal property of the veteran may claim same within 5 years from the date of the veteran's death. If claimant is under any legal disability (as a minor, incompetent, etc.) at the date of the veteran's death, the 5year period begins upon the termination of removal of legal disability. Such claims are for settlement by the field station which had originally made the deposit. In the event of doubt as to entitlement or the necessity of legal proceedings to obtain assets for the benefit of the General Post Fund, the case will be referred to the Chief Attorney of jurisdiction for advice and/or appropriate action. Any necessary court costs or expenses will be paid from the appropriation, General Operating Expenses, Veterans Administration.

[33 F.R. 1073, Jan. 27, 1968]

OPERATION OF LOST AND FOUND SERVICE § 12.24 Operation of lost and found service.

Unless maintained by the Public Buildings Service, the lost and found service will be maintained by an employee designated by the Manager to be known as the lost and found custodian. VA Form 3771, Record of Lost or Found Article, will be used for recording articles of any personal property lost or found. Every effort will be made to determine rightful ownership of found articles and to recover items which have been reported lost. Currency, including readily

negotiable instruments, found and delivered to the lost and found custodian will not be retained beyond the official closing hour. The currency or negotiable instruments will be delivered to the agent cashier before the close of business. Individuals claiming found articles will furnish complete identification and satisfy the station authority of rightful Where more than one inownership. dividual claims ownership the matter will be referred to the Manager for decision. All articles of personal property remaining unclaimed for 90 days ormore will be disposed of in accordancewith § 12.8.

[21 F. R. 3875, June 6, 1956]

PART 13—DEPARTMENT OF VET-ERANS BENEFITS, CHIEF ATTORNEYS

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13.500 Apportionment for dependent parents and payment of maintenance charges under 38 U.S.C. 3203, as amended by Public Law 86-146.

AUTHORITY: The provisions of this Part 13 issued under 72 Stat. 1114, 1232, as amended, 1237; 33 U.S.C. 210, 3202, 3203, 3311.

§ 13.1 Authority.

The regulations in this part are issued pursuant to 38 U.S.C. 210 to reflect action under 38 U.S.C. 212 to implement 38 U.S.C. 3202, 3203 and 3311 as amended by Public Laws 86–146 and 86–211. The duties, the delegations of authority, and all actions required of the Chief Attorney set forth in §§ 13.1 through 13.111 inclusive, are to be performed under the direction of, and authority vested in, the Manager of the field station.

§ 13.2 Field examinations.

- (a) Authority to conduct. Attorneys and field examiners in the Office of the Chief Attorney and other employees who are qualified and designated by the station head are authorized, when assigned, to conduct investigations (field examinations) and examine witnesses upon any matter within the jurisdiction of the Veterans Administration, to take affidavits, to administer oaths and affirmations and to aid claimants in the preparation of claims.
- (b) Scope of field examinations. Field examinations include but are not limited to the following:
- (1) Guardianship and custodianship cases.
 - (2) Offenses against the Federal Laws.
- (3) Accidents or alleged tortious acts involving a possible liability arising against or in favor of the Government.
- (4) Claims cases, including compensation, dependency and indemnity compensation, adjusted compensation, pension, retirement pay, insurance and servicemen's indemnity.
- (5) Recovery of amounts due the Government or general post fund under laws administered by the Veterans Administration.
- (6) General administrative matters as directed by the station head.
- (7) Administrative investigations involving loan guaranty matters under 38 U.S.C. Ch. 37 and education and training matters under 38 U.S.C. Chs. 31, 33 and 35.

(8) Examinations requested by a United States Attorney or other representative of the Department of Justice, in civil and criminal cases.

[25 F.R. 6286, July 2, 1960, as amended at 29 F.R. 8171, June 27, 1964; 30 F.R. 9814, Aug. 6, 1965]

§ 13.3 State legislation.

Chief Attorneys will cooperate with the affiliated organizations, legislative committees, and with local and State bar associations to the end that deficiencies of the State laws relating to guardianship, mental health and commitment of the mentally ill may be removed. No action to commit the Veterans Administration regarding any proposed legislation will be taken without the approval of the Chief Benefits Director or his designee.

[25 F.R. 6286, July 2, 1960]

§ 13.50 Authority to employ local attorneys.

In any case wherein the Chief Attorney is authorized to take legal action and to authorize the payment of costs and necessary expenses incident thereto and it is impracticable for him to perform the legal services because of distance, time, cost, etc., he may employ a local attorney to perform the legal services and authorize the payment of a fee not to exceed the customary fee charged for the service rendered.

[25 F.R. 6286, July 2, 1960]

§ 13.51 Authority of Chief Attorney in commitment and restoration proceedings.

- (a) Assistance to courts. The Chief Attorney will render assistance to the courts in cases involving the commitment of mentally ill persons to the Veterans Administration and restoration to competency of veterans under commitment to the Veterans Administration. To this end, the Chief Attorney may:
- (1) Produce Veterans Administration records.
- (2) Appear in court and make presentation of material facts.
- (3) When authorized to institute commitment or restoration proceedings under paragraph (b) of this section:
- (i) Prepare and present all necessary legal papers.
- (il) Authorize payment of costs (§ 13.53).

- (iii) Arrange transportation of veteran and attendants at Veterans Administration expense (§ 13.54).
- (b) Authority to institute commitment or restoration proceedings. (1) Commitment. If a mentally ill veteran will accept hospitalization voluntarily, no action will be initiated by any Veterans Administration employee to commit such veteran. If he will not accept hospitalization, or after being voluntarily hospitalized by the Veterans Administration demands his release, and hospitalization is necessary for his safety or the safety of others, the Chief Attorney may (if a relative of the veteran or other interested person has not done so) institute proceedings to commit the veteran to the Veterans Administration subject to the following conditions:
- (i) That he has obtained the written consent of the veteran's nearest relative. If the nearest relative cannot be readily contacted or refuses to consent coupled with inability or refusal to offer adequate alternative care, the Chief Attorney may initiate the action if the petition is signed by another relative, a civil official or representative of a cooperating agency or other person authorized by State law.
- (ii) If timely action cannot be taken under subdivision (i) of this subparagraph, the Clinic Director or his designees, or, if already hospitalized in a Veterans Administration hospital, the Hospital Director or Chief of Staff, or their designees, may sign the petition if permissible under State law, and the Chief Attorney will then take any action necessary to bring the matter before the appropriate court.
- (c) Illegal commitment. When a hospitalized veteran previously committed to the Veterans Administration demands his release and continued hospitalization is necessary for his safety or the safety of others, and the Chief Attorney determines the commitment to be illegal, he will at once take action to obtain a legal commitment.
- (d) State hospital commitment. Chief Attorneys should cooperate with the courts in the commitment of veterans to State hospitals, including the production of records required.
- (e) Restoration. When a veteran has been committed at the instance of the Veterans Administration and subsequently is rated competent by the Veterans Administration, the Chief Attorney

may institute proceedings necessary to restore the veteran to full civil rights. [25 F.R. 6286, July 2, 1960, as amended at 27 F.R. 3629, Apr. 17, 1962]

§ 13.52 Medical testimony in commitment or restoration proceedings.

- (a) Commitment. When permissible under State law, Veterans Administration physicians, upon request of the Chief Attorney, will sign interrogatories or certificates of mental illness or insanity and, unless unavailable as provided in paragraph (c) of this section will testify in proceedings which the Chief Attorney is authorized to institute under \$ 13.51 to commit eligible veterans to the Veterans Administration.
- (b) Restoration. (1) When permissible under State law, Veterans Administration physicians, upon the request of the Chief Attorney, will testify in proceedings brought for the purpose of restoring a committed veteran to full civil rights when the veteran was committed at the instance of the Veterans Administration.
- (2) The Director of the Veterans Administration hospital at which any veteran committed to the Veterans Administration was hospitalized may upon discharge of the veteran furnish a certificate of sanity or such similar certificate to the proper civil authorities or the Chief Attorney as may be contemplated by the law of the jurisdiction concerned.
- (0) Employment of private physicians. When testimony of Veterans Administration physicians is prohibited or is unavailable by reason of other duty assignments, comparative expense or other valid reason, the Manager, upon recommendation of the Chief Attorney. may employ any qualified physician for preliminary examination of the veteran and for testimony in any commitment or restoration proceeding which the Chief Attorney is authorized to institute under § 13.51, and authorize the payment of a fee not to exceed the prescribed fee, or in the absence thereof, the customary fee charged for the service rendered. [25 F.R. 6286, July 2, 1960, as amended at 27 F.R. 3629, Apr. 17, 1962]

§ 13.53 Costs in commitment or restoration proceedings.

(a) When the Chief Attorney is authorized to institute a proceeding under § 13.51, he may authorize in advance or thereafter the payment or reimburse-

ment of costs and other expenses for which the veteran is legally liable, including publication of notice necessary to accomplish the commitment.

(b) The Chief Attorney also may authorize the payment of necessary costs and expenses for which the veteran is legally liable incident to his restoration to full civil rights if the veteran was committed at the instance of the Veterans Administration.

[25 F.R. 6286, July 2, 1960]

§ 13.54 Authorization of transportation necessary for commitment of a veteran beneficiary.

When a mentally ill veteran who should be committed is hospitalized by the Veterans Administration and under the law of the State wherein the hospital is located a commitment may not be had locally, the veteran may be returned temporarily to the jurisdiction of the appropriate court in order that the commitment can be accomplished. If the veteran is in a Veterans Administration hospital, the Hospital Director may authorize travel of the veteran and an attendant or attendants, if necessary, upon request of the Chief Attorney. If the veteran is being maintained in a non-Veterans Administration hospital, the Manager of the regional office concerned may authorize such travel upon request. of the Chief Attorney.

[27 F.R. 3629, Apr. 17, 1962]

§ 13.55 Chief Attorney to determine type of payee.

- (a) The Chief Attorney is authorized to determine: the appropriate payee of Veterans Administration benefits for beneficiaries who are mentally ill or under legal disability by reason of minority or action of a court of competent jurisdiction, and their dependents; and the suitability of persons and legal entities to receive Veterans Administration benefits in a fiduciary capacity. Authorized methods of payment include:
 - (1) Directly to a veteran (§ 13.56);
- (2) To the wife of an incompetent. veteran (§ 13.57);
- (3) To the legal custodian of a beneficiary (§ 13.58);
- (4) To the guardian of a beneficiary (§ 13.59):
- (5) To the Chief Officer of the institution in which the veteran is receiving care and treatment (§ 13.61);

- (6) To the bonded officer of an Indian reservation (§ 13.62):
- (7) To a custodian-in-fact of the beneficiary (§ 13.63);
- (8) By apportionment to dependents of the veteran (§ 13.70).
- (b) A fiduciary will not be required, for Veterans Administration purposes, when:
- (1) The Chief Attorney recommends payment directly to the veteran:
- (2) The beneficiary's only legal disability is minority and he or she is in active military, naval or air service, or a veteran, or the widow of a veteran, or a minor who has entered into a program of education or training under 38 U.S.C. Ch. 35, as amended, and has been designated by the Manager under § 21.3051(c) of this chapter to receive payments directly.
- (c) The Chief Attorney's certification is sufficient authority to make payments to the person designated therein upon behalf of the beneficiary.

[25 F.R. 6287, July 2, 1960]

§ 13.56 Direct payment to veteran.

Veterans Administration benefits payable to a veteran who is rated incompetent by the Veterans Administration but has not been adjudged insane and has no guardian may be paid directly to the veteran when he is rated as competent because the Chief Attorney finds as fact and submits evidence that the veteran has demonstrated ability to handle the amount payable with reasonable prudence.

[25 F.R. 6287, July 2, 1960]

§ 13.57 Payment to the wife of incompetent veteran.

Compensation, pension or emergency officers' retirement pay of an incompetent veteran having no guardian may be paid to his wife for the use of the veteran and his dependents, provided she is qualified to administer the benefits payable and will agree to use the amounts paid for that purpose.

[25 F.R. 6287, July 2, 1960]

§ 13.58 Legal eustodian.

(a) Authority. The Chief Attorney is authorized to make determinations as to the person or legal entity legally vested with the care of the person or estate of a beneficiary who has no guardian and who is mentally ill or under legal disability by reason of minority or action of a court of competent jurisdic-

- tion. The person or legal entity so recognized will be termed a legal custodian.
- (b) Payment to. Veterans Administration benefits may be paid to a legal custodian subject to the following conditions:
- (1) The beneficiary is not under a guardianship of the person and estate or of the estate and it would be for the best interest of the beneficiary to recognize a legal custodian.
- (2) The proposed legal custodian is qualified to administer the benefits payable and will agree to:
- (i) Apply the benefits paid for the best interests of the beneficiary.
- (ii) Invest surplus funds as provided by Veterans Administration regulations.
- (iii) Provide adequate safeguards for the estate,
- (iv) Establish upon request compliance with agreement and the existence of funds agreed to be saved, and
- (v) Inform the Chief Attorney upon any admission of veteran-beneficiaries without wife or child for hospital treatment, institutional or domiciliary care of the beneficiary to an institution operated by the United States or a political subdivision thereof, and thereafter account as provided in § 13.102.
- [25 F.R. 6287, July 2, 1960, as amended at 28 F.R. 10750, Oct. 5, 1963; 30 F.R. 9814, Aug. 6, 1965]

§ 13.59 Guardian.

- (a) Payment to. Any Veterans Administration benefit may be paid to the guardian appointed by a State court for a beneficiary who is a minor, or incompetent or under other legal disability adjudged by a court of competent jurisdiction.
- (b) Chief Attorney's authority. The Chief Attorney shall:
- (1) Determine and recommend to the court the person or legal entity best fitted for appointment as guardian for the particular beneficiary.
- (2) Upon request, represent the petitioner in the appointment proceedings when the Veterans Administration payments are not sufficient to justify employment of counsel.
- (3) Sign certifications of need for a guardian and of minority or of rating of incompetency by the Veterans Administration of the beneficiary required by the Uniform Veterans Guardianship Act or similar State legislation.
- (4) Upon request, represent the guardian in guardianship proceedings when

the estate is not sufficient to justify employment of counsel.

- (5) Appear in State trial courts as attorney for the Administrator of Veterans Affairs in all guardianship matters and in appellate courts when authorized.
- (6) Require accountings, formal or informal, of guardians with or without judicial proceedings.
- (7) Take such other action, including institution of appropriate legal proceedings, as may be necessary, to assure that the needs of the beneficiary are provided for and Veterans Administration benefits are prudently administered and adequately protected.

[25 F.R. 6287, July 2, 1960, as amended at 28 F.R. 10750, Oct. 5, 1963]

§ 13.60 Authority to file petitions for appointment of guardians.

- (a) Adult beneficiary. The Chief Attorney is authorized to file or cause to be filed a petition for the appointment of a guardian for an adult beneficiary only when he has determined that alternative methods of payment would not be to the best interests of the beneficiary and when he has obtained the written consent of:
- (1) The beneficiary (if he is capable of understanding the consequences of his act).
- (2) The beneficiary's spouse if he is incapable of consenting or refusing.
- (3) The beneficiary's adult child, parent, adult brother or sister if the beneficiary is unmarried or consent of the spouse is immaterial because of estrangement or mental incapacity or refusal to consent coupled with failure to offer adequate alternative means for providing for the beneficiary's needs.
- (4) A civil official or representative of a cooperating agency when consent of one of the relatives listed in subparagraphs (2) and (3) of this paragraph cannot be obtained because none can be located after reasonable inquiry or those located are not mentally competent to consent or refuse without offering adequate alternative means for providing for the needs of the beneficiary.
- (b) Minor beneficiaries. The Chief Attorney is authorized to file or cause to be filed a petition for the appointment of a guardian of a minor, if permissible under the law of the jurisdiction concerned when he determines the protection of the minor's rights under laws administered by the Veterans Administration requires

the appointment provided: He has obtained the written consent of the minor's natural or adoptive parent or parents or the person or persons occupying the relationship of "in loco parentis" as defined by the law of the jurisdiction in which they reside. The Chief Attorney will not institute a guardianship proceeding over the objections of such parent or parents if they are sui juris unless:

- (1) The parents have abandoned the minor or otherwise refused to meet their parental obligations toward the minor or they have previously been appointed or recognized as the minor's fiduciary and failed to properly execute the duties of their trust:
- (2) The minor has no parent or the parent or parents are not sui juris, in either of which case the Chief Attorney may file the petition without the consent of any relative.

[25 F.R. 6287, July 2, 1960]

§ 13.61 Payment to Chief Officer of institution.

The Chief Attorney may recommend the payment of all or part of the pension, compensation or emergency officers' retirement pay payable in behalf of a veteran rated incompetent by the Veterans Administration to the Chief Officer of the institution wherein the veteran is being furnished hospital treatment, institutional or domiciliary care, for his use and benefit, when the Chief Attorney has determined such payment (called an institutional award) will adequately provide for the needs of the veteran and obviate need for appointment of a guardian.

[25 F.R. 6288, July 2, 1960]

§ 13.62 Payment to bonded officer of Indian reservation.

Any benefits due an incompetent adult or minor Indian, who is a recognized ward of the Government and for whom no guardian has been appointed, may be awarded to the superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under 25 U.S.C. 14.

[25 F.R. 6288, July 2, 1960]

§ 13.63 Payment to custodian-in-fact.

Any Veterans Administration benefit due a beneficiary who is a minor, or is mentally ill, or under other legal disability adjudged by a court of competent jurisdiction, and who has a fiduciary to whom payments may not properly be made, may be paid temporarily to the person having custody and control of the beneficiary and who will agree to account for the funds paid and expend such funds solely for the use of the beneficiary.

[25 F.R. 6288, July 2, 1960]

§ 13.64 Natural guardians.

Chief Attorneys may authorize the payment of Veterans Administration benefits payable in behalf of minors to natural guardians when such persons are constituted guardians of the person and estate of the minor in the Commonwealth of Puerto Rico, Territory or insular possession of the United States, or foreign country in which they reside. [27 F.R. 3629, Apr. 17, 1962]

§ 13.65 Legal services.

- (a) Chief Attorneys may furnish legal services in behalf of minor and incompetent beneficiaries of the Veterans Administration in guardianship matters when the beneficiary's estate or income is not sufficient to justify the employment of an attorney.
- (b) Where the guardian does not in due course institute the necessary action to terminate the guardianship and the beneficiary requests the Chief Attorney to represent him, or in any such case where there is in question the proper administration of the estate, the Chief Attorney may file the necessary action and supply legal services. Costs, unless assessed against the guardian, should be charged to the estate of the beneficiary. [25 F.R. 6288, July 2, 1960]

§ 13.67 Authorization of transportation of a veteran beneficiary for appointment of a guardian.

When the appointment of a guardian is required for an incompetent veteran hospitalized by the Veterans Administration and under the law of the State wherein the hospital is located the appointment cannot be had locally, the veteran may be returned temporarily to the jurisdiction of the appropriate court in order that the appointment can be accomplished. If the veteran is in a Veterans Administration hospital, the Hospital Director may authorize travel of the veteran and an attendant or attendants, if necessary, upon request of the Chief Attorney. If the veteran is being maintained in a non-Veterans Administration hospital, the Manager of the regional office concerned may authorize such travel, upon request of the Chief Attorney.

[27 F.R. 3629, Apr. 17, 1962]

§ 13.68 Costs and other expenses incident to appointment of guardian.

- (a) The Chief Attorney may authorize the payment of costs and other necessary expenses incident to the appointment of a guardian of a beneficiary of the Veterans Administration including successor guardians when:
- (1) Benefits are small and such costs would unduly deplete the estate (accrued benefits and private estate do not exceed \$2,000).
- (2) Appointment was caused by Veterans Administration and it develops that no benefits are payable and no estate from which costs may be paid.
- (3) Costs must be advanced when there is no immediate estate from which same may be paid. These costs to be recovered from benefits payable unless the case falls within subparagraph (1) of this paragraph.
- (b) Costs and necessary expenses include:
- (1) All those chargeable by statute or rule of court and certified by the clerk of court.
- (2) Certified copies of court records required by Veterans Administration.
- (3) Fees for guardian ad litem when chargeable as court costs and required by State law.

[25 F.R. 6288, July 2, 1960]

§ 13.69 Limitation of wards to individual guardian.

The policy of the Veterans Administration is to limit to five the number of wards for whom an individual guardian may act, except where such individual is acting as guardian for the minors of the same family and the cooperation of the court will be sought to that end.

(a) When an individual has been appointed as guardian of the estate or as guardian of the person and estate of more than five beneficiaries of the Veterans Administration, except for minors of the same family, the Chief Attorney will take no further action if the administration of the estates or of the persons and estates is satisfactory in every respect. In those States having a

statute limiting the number of wards the guardian will be removed in the excess cases.

(b) The policy stated in this section will not be applied to public officials who, by reason of their office, are appointed as guardians in accordance with the State laws, when such appointments are as to the office and not as to the individual incumbent of the position.

[25 F.R. 6288, July 2, 1960]

§ 13.70 Apportionment of benefits to dependents.

- (a) Incompetent veterans being furnished hospital treatment, institutional or domiciliary care by United States or political subdivision thereof. (1) The Chief Attorney may recommend the apportionment of compensation, pension or emergency officers' retirement pay payable in behalf of a veteran, who is incompetent or under other legal disability by action of a court, to or in behalf of his wife, child or dependent parent as may be necessary to provide for their needs.
- (2) When payment of compensation, pension or emergency officers' retirement pay, in behalf of a veteran who is rated incompetent by the Veterans Administration by reason of mental illness has no wife or child and is being furnished hospital treatment, institutional or domiciliary care by the United States or a political subdivision thereof, has been stopped because his estate equals or exceeds \$1,500, the Chief Attorney may recommend the payment of so much of the benefit otherwise payable as is necessary to provide for the needs of dependent parent or parents.
- (b) Dependent parents. When the compensation of a veteran paid to his fiduciary includes an additional amount for a dependent parent or parents and the fiduciary neglects or refuses to make an equivalent contribution for their support, the Chief Attorney may recommend the apportionment to the parent or parents of the additional amount.
- (c) Payments withheld because of flduciary's failure to properly administer veteran's estate. When payments of compensation, pension or emergency officers' retirement pay payable in behalf of a veteran have been stopped because of his flduciary's failure or inability to properly account or otherwise administer the estate, the Chief Attorney may recommend the apportionment to the veteran's wife, child or dependent parent of

any benefit not paid under an institutional award or to a custodian-in-fact. [25 F.R. 6288, July 2, 1960, as amended at 27 F.R. 3629, Apr. 17, 1962]

§ 13.71 Payment of cost of veteran's maintenance in institution.

- (a) By institutional award. (1) The payment of part of compensation, pension or emergency officers' retirement pay for the cost of a veteran's hospital treatment, institutional or domiciliary care in an institution operated by a political subdivision of the United States may be authorized as provided in subparagraph (2) of this paragraph when:
- (i) The veteran is rated incompetent by the Veterans Administration and has no wife, child, dependent parent or guardian.
- (ii) The Chief Attorney has determined the veteran is legally liable for the cost of his maintenance, and
- (iii) The institution's representative has asserted or probably will assert a claim for full maintenance costs,
- (2) Subject to these conditions and the further condition that the responsible official of the institution or political subdivision will agree not to assert against Veterans Administration benefits any further claim for maintenance during the veteran's lifetime, the Chief Attorney may agree with such official to the payment of the veteran's benefits through an institutional award to be applied to:
- (i) A monthly amount determined by the Chief Attorney to be needed for the veteran's personal use,
- (ii) An amount to be agreed upon to be accumulated to provide for the veteran's rehabilitation upon release from the institution, and
- (iii) So much of the amount of the benefit as remains not exceeding the amount the Chief Attorney shall determine to be the proper charge as fixed by statute or administrative regulation, to the cost of the veteran's maintenance.
- (3) Upon execution of an agreement as provided in subparagraph (2) of this paragraph, the Chief Attorney may certify to the adjudication agency the total amount to be released to the Chief Officer of the institution.
- (b) By direct payment. When payment of compensation, pension or emergency officers' retirement pay in behalf of a veteran rated incompetent by the Veterans Administration by reason of

mental illness, who has no wife or child and is being furnished hospital treatment, institutional or domiciliary care by a political subdivision of the United States, has been stopped because his estate has reached \$1,500, the Chief Attorney may certify to the adjudication agency the amount to be released to the responsible official to pay for the cost of the veteran's current care and maintenance. The amounts pald in such cases shall not exceed the amount of the benefit otherwise payable less any amounts apportioned to dependent parents and in no event exceed the amount which the Chief Attorney shall determine to be the proper charge as fixed by statute or administrative regulation. 125 F.R. 6288, July 2, 1960, as amended at 28 F.R. 7832, Aug. 1, 1963]

§ 13.72 Release of funds from Personal Funds of Patients.

Chief Attorneys may authorize release of funds from Personal Funds of Patients for the needs of veterans and their dependents, including amounts fixed by statute or valid administrative regulations as the cost of current maintenance of veterans in institutions of the United States or a political subdivision thereof other than Veterans Administration institutions.

[26 F.R. 10232, Nov. 1, 1961]

§ 13.73 Transfer of funds from Funds Due Incompetent Beneficiaries.

- (a) Authorization. Chief Attorneys may recommend the transfer of amounts credited to individual veterans from Funds Due Incompetent Beneficiaries to Personal Funds of Patients at Veterans Administration hospitals, regional offices and centers. Chief Attorneys may recommend the transfer of such funds from Funds Due Incompetent Beneficiaries to directors, superintendents or medical officers in charge of non-Veterans Administration institutions maintained by the United States or a political subdivision thereof for the account of the institutionalized veteran.
- (b) Limitation. No transfer of funds will be authorized from Funds Due Incompetent Beneficiaries in excess of \$500 and only when the funds in Personal Funds of Patients or deposited to the veteran's account at an institution do not exceed \$500 prior to such transfer.

[26 F.R. 10232, Nov. 1, 1961, as amended at 27 F.R. 3630, Apr. 17, 1962]

§ 13.74 Recommendation for payment.

- (a) General. When veterans' benefits are discontinued under 38 U.S.C. 3203 (b) (2), Chief Attorneys are delegated authority to recommend apportionments or awards in accordance with paragraphs (b) and (c) of this section.
- (b) Needy dependent parent. If the veteran's estate is \$4,000 or more, the Chief Attorney may authorize payment from Personal Funds of Patients or recommend payment from the veteran's estate for the needs of the dependent parent and for the care and maintenance of the veteran if hospitalized by the United States or a political subdivision thereof. If the estate is \$2,500 or more but less than \$4,000, the Chief Attorney may recommend an apportionment from appropriated funds to the dependent parent or parents, predicated upon need, not to exceed the veteran's discontinued award, and authorize an award to the hospital from Personal Funds of Patients if available, otherwise, the hospital must look to the veteran's estate for payment. If the veteran's estate is less than \$2,500, the Chief Attorney may recommend an apportionment to the dependent parents, predicated upon need, and an award of so much of the balance, if any, of the veteran's discontinued award as is necessary for the current care and maintenance of the veteran, to the hospital.
- (c) No dependents. If the veteran is hospitalized by the United States or a political subdivision thereof other than a Veterans Administration institution and has no dependent parent, and the estate is less than \$2,500, the Chief Attorney may recommend an award from appropriated funds, not to exceed the amount of the veteran's discontinued award, to the hospital for current care and maintenance. When the veteran's estate is \$2,500 or more, no award from appropriated funds should be made but the Chief Attorney may authorize an award from Personal Funds of Patients if available; otherwise, the hospital must look to the veteran's estate for payment.
- (d) Hardship cases. Chief Attorneys are authorized, in exceptional cases, to deviate from the criteria stated to avoid hardship.
- [26 F.R. 10233, Nov. 1, 1961, as amended at 27 F.R. 3630, Apr. 17, 1962]

§ 13.75 Application of 38 U.S.C. 3203 (b) (2) to confinement of incompetent veteran in a penal institution.

Payment of compensation, pension or retirement pay to a veteran who comes within the provisions of 38 U.S.C. 3203 (b) (2) must be discontinued upon confinement in a penal institution, whether awaiting trial, sentence, or after conviction, until his release from such institutional care (§ 13.108).

[26 F.R. 10233, Nov. 1, 1961]

§ 13.76 Appeals from Chief Attorney's determination under 38 U.S.C. 3203 (b) (3).

- (a) Notification. The Chief Attorney will be responsible for notification of action taken and the right to initiate an appeal by filing a notice of disagreement and of the time limits within which such notice may be filed (§ 19.109 of this chapter) when he determines that:
 - (1) The dependent is not in need.
- (2) The needs of the dependent parent are to be met from the veteran's estate or from Personal Funds of Patients and no payments or partial payments will be made for the dependent parents' support from appropriated funds.
- (3) No award from appropriated funds for care and maintenance for the veteran in a non-Veterans Administration hospital will be made, and that the veteran's estate will have to defray the cost.
- (b) Appeals. Part 19 of this chapter will be followed in connection with appeals to the Board of Veterans Appeals from determinations of the Chief Attorney. Appeals may be initiated by a dependent parent on questions of need and payments for his or her support from appropriated funds, and by a guardian for the disallowance of the use of appropriated funds for the veteran's institutional care and maintenance.
- (c) Statement of the case. When a notice of disagreement is filed, the Chief Attorney will be responsible for furnishing the claimant and his representative with a statement of the case and such notification regarding the filing of an appeal as is provided for in §§ 19.114(b) and 19.115 of this chapter.

[29 F.R. 1463, Jan. 29, 1964]

§ 13.77 Administrative review of the Chief Attorney's determination made under 38 U.S.C. 3203(b)(3).

(a) Chief Attorney (reversals). (1) The Chief Attorney may revise any pre-

vious determination upon review of the evidence of record, provided a specific finding is made in writing that it was clearly and unmistakably erroneous.

(2) The Chief Attorney may revise a previous determination upon receipt of

new evidence.

(b) Chief Benefits Director. Upon request for further review by the dependent parent, the Chief Benefits Director or his designee will review and may revise the determination of the Chief Attorney as to the amount to be paid from Personal Funds of Patients for the support of the dependent parent, predicated upon need.

[26 F.R. 10233, Nov. 1, 1961]

§ 13.100 Supervision of fiduciaries.

- (a) In any case where a fiduciary fails to render a satisfactory account or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are illegal or inequitable or in excess of those allowed by law, or has failed to use Veterans Administration funds for the benefit of the ward or his dependents, or has otherwise failed or neglected to properly execute the duties of his trust, the Chief Attorney will take effective action to protect the interests of the beneficiary.
- (b) (1) In any such case he may have all Veterans Administration benefits suspended.
- (2) In guardianship cases he may appear in the court of appointment or in any court having original, concurrent, or appellate jurisdiction, and make proper presentation relating to the foregoing matters. His authority includes but is not limited to:
- (i) Petitioning the court to cite a guardian to account;
- (ii) Filing exceptions to accountings;(iii) Requiring guardians to file bonds or make any necessary adjustments;

(iv) Requiring investments;

- (v) Filing petitions to vacate or modify court orders:
- (vi) Appearing or intervening in any State court as attorney for the Administrator of Veterans Affairs in litigation instituted by the Administrator or otherwise affecting money paid to such fiduciary by the Veterans Administration:
- (vii) Incurring necessary court costs and other expenses, including witness fees, appeal bonds, advertising in any newspaper or other publication, preparing briefs or transcripts, purchase of records of trial or other records;

(viii) Instituting any other action necessary to secure proper administration of the estate of a Veterans Administration beneficiary, such as filing petitions for the removal of guardians and certifying successor fiduciaries:

(ix) Taking appropriate action to recover funds improperly disbursed.

- (3) In custodianship cases he may require an accounting, formal or informal as he deems necessary, of Veterans Administration benefits paid, terminate recognition of the legal custodian, institute proceedings for the appointment of a guardian and render legal services for such guardian in any action against the custodian necessary to the protection of the ward's interests.
- (c) Unless a trial is de novo, no appeal shall be taken to an appellate court and no costs incurred in connection therewith without the prior approval of the Chief Benefits Director or his designee.
- (d) When the evidence shows a prima facie case of misappropriation, embezzlement or violation of the Federal statutes, the Chief Attorney shall refer the case to the United States Attorney.

 [28 F.R. 10750, Oct. 5, 1963]

§ 13.101 Management and use of estates of minors.

Veterans Administration benefits payable in behalf of minors should be used for their benefit. Such funds should be expended only to the extent the person or persons responsible for their needs are unable to provide for them, except those derived from payments under 38 U.S.C. ch. 35.

[28 F.R. 10751, Oct. 5, 1963]

§ 13.102 Accountability of legal custodians.

- (a) Institutionalized veterans without wife or child. The legal custodian of any incompetent veteran who has neither wife nor child and who is being furnished hospital treatment, institutional or domiciliary care by the United States or a political subdivision thereof, will account annually to the Veterans Administration for funds received from the Veterans Administration for the beneficiary and will submit annually a statement of all other income received during the accounting period and the total assets from any source held for the beneficiary.
- (b) All other beneficiaries. Compliance with the agreement as to benefit use and any authorized modifications due to changed need, proof of existence

of funds surplus to immediate needs and proper investment thereof, if appropriate, will be established upon home contact, normally at triennial intervals. Periodic written accountings will not be required.

[30 F.R. 9814, Aug. 6, 1965]

§ 13.103 Investments by legal custodians.

(Ward's Name)
todianship by designation of the Veterans Administration.
(Ward's Address)

[28 F.R. 10751, Oct. 5, 1963]

§ 13.104 Accounts of guardians.

- (a) The Chief Attorney will require accountings from guardians as provided by State law, but in no event less frequently than once every three years. Arrangements will be made with the courts whereby notices of filing of all petitions, accounts, etc., and of hearings on same, relative to guardianship cases wherein the Veterans Administration is interested, will be sent to the Chief Attorney. If this is done, the court will be notified in due time whether the Veterans Administration has any objections to offer.
- (b) Accounts will not be required, in the discretion of the Chief Attorney, in cases when the fiduciary and ward permanently reside in a jurisdiction other than a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or the Republic of the Philippines, and the fiduciary appointment was made in said jurisdiction.
- (c) Accountings normally will not be required in cases involving incompetent adults other than veterans.

[28 F.R. 10751, Oct. 5, 1963]

§ 13.105 Surety bonds.

(a) It is the policy of the Veterans Administration to require, where possible under State laws and rules of the court, corporate surety bonds in all guardianship cases where the fiduciary is an in-

dividual and the estate is sufficient to justify the expense of procuring a corporate surety bond. Corporate bonds may be required of corporate fiduciaries in accordance with State laws. In cases wherein guardians neglect or refuse to furnish corporate bonds, as requested by the Chief Attorney, the Chief Attorney may decline to continue or open payments to such guardians and take necessary court action.

(b) When it is not practical or feasible for a fiduciary to obtain a corporate bond, the Chief Attorney is authorized to accept bonds of such number of personal sureties as is permissible under State law, in any event, not less than one. Evidence must be received that each such surety owns real property, over and above all liens, exemptions, and encumbrances. at least equal in value to the penal sum of the bond and qualifies in accordance with the requirements of the State law. In such instances the fiduciary will be required to furnish with each accounting evidence as to the financial status of the personal surety or sureties. Where any question arises as to the ability of a personal surety to meet any probable liability, the Chief Attorney will investigate such personal surety's responsibility. Where such responsibility is found to be insufficient, the Chief Attorney will promptly authorize suspension of payments until a surety of sufficient financial responsibility has been provided.

(c) Additional or increased bonds will be required at each accounting period commensurate with the value of the estate. The Chief Attorney will take court action, if necessary, to assure that an adequate bond with good surety or sureties is in effect.

(d) If any surety company is placed in receivership or ceases to do business in the particular State, the Chief Attorney will take the necessary action to have proper bonds substituted in each case. In the case of receivership, bankruptcy, or other proceedings to conserve the assets, or wind up the affairs of a corporate surety, the Chief Attorney will ascertain the termination date for filing claims with local and general receivers or other designated officials and see that all adjudicated and contingent claims are filed in time to receive proper classification and allowances.

[25 F.R. 8256, Aug. 30, 1960, as amended at 28 F.R. 10751, Oct. 5, 1963; 31 F.R. 12056, Sept. 15, 1966]

§ 13.106 Investments by courtappointed fiduciaries.

- (a) The Chief Attorney will recommend investments in United States Government bonds. He will insist that funds held by court-appointed fiduciaries be invested in accordance with State law. If requested, he will inform the fiduciary as to legal investments under appropriate State law.
- (b) No preference shall be given to any bond dealer, or investment broker, nor any recommendation made with reference thereto.
- (c) The Chief Attorney will advise fiduciaries or the courts with respect to any known doubtful or undesirable characteristics of any legal investment which might jeopardize the safety of the beneficiary's estate.
- (d) The Chief Attorney will require the investment of surplus funds and shall obtain from the fiduciary, preferably prior to investment, evidence identifying the type of investment. If the investment is not proper or legal, or not for the best interests of the beneficiary, the Chief Attorney will so advise the fiduciary and take the necessary action, under the State law, to prevent or object to the investment.

[25 F.R. 8256, Aug. 30, 1960]

§ 13.107 Accounts of Chief Officers of private or State hospitals.

- (a) The Chief Officer of an institution, other than a Federal institution, shall render an account annually to the Veterans Administration for funds received from the Veterans Administration on account of an incompetent beneficiary. The Chief Attorney will require an accounting annually of such institutions for such funds only, and may assign Veterans Administration personnel to assist in the rendition of such accounting.
- (b) The Chief Attorney shall obtain annually from the Chief Officers of the aforementioned institutions a statement of all of the income received for the current year and the total assets held for account of the incompetent.

[25 F.R. 8256, Aug. 30, 1960]

- § 13.108 Estate \$1,500; incompetent veteran, without wife or minor or helpless children, is being furnished hospital treatment, institutional or domiciliary care hy the United States or a political subdivision thereof.
- (a) Where a veteran, rated incompetent by the Veterans Administration by

reason of mental illness, without wife or minor or helpless children, is receiving hospital treatment, domiciliary or institutional care in a public institution other than a Veterans Administration institution or has a fiduciary and is receiving hospital treatment or domiciliary care in a Veterans Administration institution. and his estate equals or exceeds \$1.500. the Chief Attorney shall immediately notify the Adjudication activity so that payments, other than insurance, may be discontinued. In those cases in which the payment has been discontinued, the Chief Attorney shall, when such estate has been reduced to \$500, immediately notify the Adjudication activity of that fact.

(b) In any case in which a veteran, without wife or child, is hospitalized by the United States or a political subdivision thereof and his award of compensation, pension or emergency officers' retirement pay has been discontinued because his estate equals or exceeds \$1,500, an apportionment of the award otherwise payable may nevertheless be made to a dependent parent, if any, based upon actual need as determined by the Chief Attorney. So much of any monthly remainder of the discontinued payments as equals the amount charged to the veteran for his current care and maintenance in the institution in which treatment or care is furnished, but not more than the amount determined by the Chief Attorney to be the proper charge as fixed by statute or valid administrative regulation, may be paid to the institution. The Chief Attorney shall recommend to the adjudication activity the amount of either award.

(c) In the event of the incompetent veteran's death in other than a Veterans Administration institution, the Chief Attorney should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients.

[25 F.R. 8256, Aug. 80, 1960, as amended at 27 F.R. 3630, Apr. 17, 1962]

§ 13.109 Report of income and assets.

(a) Valuation of estate. Except as stated in subparagraph (4) of this paragraph, all funds, including accumulated social security and amounts on deposit in Funds Due Incompetent Beneficiaries and to the veteran's credit in Personal Funds of Patients at Veterans Administration regional offices, hospitals, State institutions, hospitals or institutions of

any nature whatsoever, as well as other property, both personal and real (which is capable of being liquidated), and interest therein owned by the veteran, will be included in arriving at the value of the veteran's estate.

(1) The value of real and personal property, including any interest therein, will be established at the estimated net price the veteran's equity in the property will bring at forced sale after payment of all costs incident to liquidation.

(2) United States savings bonds, war bonds, adjusted service bonds, and other appreciation bonds, the current value, including accrued interest, will be used.

(3) Bonds and stocks, the current price listed on recognized stock exchange or by over-the-counter dealers will be the value to be used. In the absence of either, other reliable evidence of value may be used.

(4) The following will not be included as assets:

(i) Adjusted service certificate.

(ii) Insurance pollcy having cash surrender or loan value.

(iii) Dividend credits on National Service life insurance and United States Government life insurance policies.

(iv) Personal property, such as furniture and household equipment, working tools, livestock and jewelry, which are included under State exemption statutes.

Note: Cash in the estate will be considered, notwithstanding it was derived from any of the above excluded items.

[25 F.R. 8256, Aug. 30, 1960]

§ 13.110 Escheat; post fund.

In the event of the death of the beneficiary under guardianship, the Chief Attorney will secure from the guardian a final account showing the amount, if any, of funds held by the guardian derived from payment of benefits under laws administered by the Veterans Administration for the purpose of determining the amount of any funds which may escheat to the United States pursuant to 38 U.S.C. 3202(e), or which may vest in the General Post Fund pursuant to 38 U.S.C. 5220(a). The Chief Attorney will ascertain whether administration will be had on the estate of the deceased beneficiary and, also, whether there are any heirs capable of inheriting. If there are no such heirs, he will report the fact to the appropriate adjudication activity and, in the case of an institutional award, to the Chief Officer of the institution. In such cases the Chief Attorney will endeavor to effect the return of the estate in the hands of the particular fiduciary to the United States, in connection with the final accounting of the fiduciary, or in any manner which may be possible under local procedure and practice, without litigation. If unsuccessful in this effort, a complete report will be submitted to the General Counsel. [25 F.R. 8256, Aug. 30, 1960]

§ 13.111 Claims of creditors.

Under 38 U.S.C. 3101(a), payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt, either before or after receipt by the beneficiary, from the claims of creditors and State and local taxation. The fiduciary should invoke this defense where applicable. If he does not do so. the Chief Attorney will raise the issue by a proper plea unless the amount involved is inconsequential, or if he deems it inequitable. The Chief Attorney will protect the record for possible appeal.

[25 F.R. 8257, Aug. 30, 1960]

Central Office Board on Waivers and Compromises; field station committees.

(a) Establishment. There are established in Central Office a Board of Waivers and Compromises and in each field station a Committee on Waivers and Compromises to perform the duties and assume the responsibilities delegated by §§ 13.201 and 13.202. All determinations with respect to waivers made pursuant to §§ 3.1900 through 3.1908, and all determinations with respect to compromises or waivers relating to loan guaranty matters made pursuant to §§ 36.-4380 through 36.4389, prior to the activation of the Central Office Board and the field station Committees established by this section shall be deemed valid and binding on all parties concerned.

(b) Board on Waivers and Compromises—(1) Composition. The Board shall consist of a Chairman and five members. Members shall be selected so that in each of the debt claims activities of compensation, pension and education, insurance, loan guaranty, and finance, there is at least one member with special competence. An alternate Chairman and alternate members shall be designated to act in the absence of the principals.

(2) Selection. The Chairman, members of the Board and alternates shall be appointed by the Chief Benefits Director. Service on the Board shall be duty in addition to regular assignments at the call of the Chairman.

(3) Administrative control and staff. The professional and clerical staff of the Board will function under the supervision and administrative control of the Direc-

tor, Guardianship Service.

(c) Committee on Waivers and Compromises—(1) Composition. The Committee shall consist of a Chairman and five members at stations having loan guaranty activities or four members at other stations. Members shall be selected so that in each of the debt claims activities of compensation, pension and education; insurance; loan guaranty (at station having such activities); and finance, there is at least one member with special competence. An alternate Chairman and alternate members may be designated to act in the absence of their principals at stations, when needed.

(2) Selection. The Manager or Center Director shall designate the employees to serve as Chairman, members and alternates. Except upon specific authorization of the Chief Benefits Director, when work load warrants a full-time committee, such designation will be parttime additional duty upon call of the Chairman.

 Administrative control and staff. The Committee and professional and clerical staff shall function under the administrative control of the Chief Attornev.

(d) Panels. When a claim is properly referred to the Board or Committee, the Chairman shall designate a panel of three (of whom the Chairman may be one, and one other shall be specially qualified in the program field from which the debt arose), who shall consider and determine the action to be taken. If their decision is unanimous, it will be the Board or Committee decision. Otherwise, the case will be considered by the entire membership of the Board or Committee and a majority shall determine the decision. In such cases the Chairman shall not vote except when necessary on four-member committees to break a tie.

[32 F.R. 4534, Mar. 25, 1967]

§ 13.201 Jurisdiction.

The Central Office Board and field station Committees are authorized, except as to determinations under § 2.6(d) (2) of this chapter where applicable, to consider and determine as limited in §§ 13.200 through 13.217, questions of school liability, compromise, waiver and suspension or termination of collection action concerning the following debts and overpayments:

(a) Arising out of operations of the Department of Veterans Benefits:

(1) Overpayments or erroneous payments of pension, compensation, dependency and indemnity compensation, burial allowance, subsistence allowance, education or insurance benefits.

(2) Debts arising out of the loan program under 38 U.S.C. Ch. 37 after liquidation of security, if any.

(3) Such other debts as may be specifically assigned by the Chief Benefits Director.

(b) Resulting from services erroneously furnished.

[32 F.R. 4534, Mar. 25, 1967]

§ 13.202 Board and Committee authority.

- (a) Central Office Board. On matters covered in § 13.201, the Central Office Board is authorized to determine the following issues:
- (1) Compromise. Where approval of a compromise is recommended by the field station Committee, and the debt or overpayment exceeds \$2,500, but not \$20,000 exclusive of interest (except in loan guaranty matters, which, under 38 U.S.C. Ch. 37, are unlimited as to amount).
- (2) Termination of collection action. When approval of termination of collection action is recommended by the field station Committee, and the debt or overpayment exceeds \$2,500 but not \$20,000 exclusive of interest.
- (3) School liability. Where a field station Committee makes a recommendation concerning liability of a school, or liability of both the school and the veteran or eligible person, and the debt or overpayment exceeds \$2,500, or, regardless of the amount, the school requests administrative review of its liability pursuant to the § 13.214.
- (4) Jurisdiction assumed. Where jurisdiction within § 13.201 is otherwise assumed.
- (b) Field Station Committee—(1) Decisions. On matters covered in § 13.201,

the field station Committee is authorized to determine the following issues:

(i) Waivers. A decision may be rendered to approve or deny waiver.

(ii) Compromises. A decision may be rendered where a compromise offer is rejected, or, if the debt or overpayment is \$2,500 or less, to accept a compromise offer.

(iii) School liability. A decision may be rendered as to school liability as provided in § 13.214, where the debt or overpayment is \$2.500 or less.

(iv) Suspension of collection action. A decision may be rendered to approve or disapprove suspension of collection action where the debt or overpayment is more than \$150 but not over \$20,000, exclusive of interest.

(v) Termination of collection action. A decision may be rendered to disapprove termination of collection action where the debt or overpayment is more than \$150 but not over \$20,000, or if the debt or overpayment is more than \$150 but not over \$2,500, exclusive of interest, to approve termination of collection action.

(2) Tentative decision. When the Committee is not authorized to render a decision, a tentative decision will be prepared for approval by the Central Office Board.

(c) Fiscal officer. The Chief of the Fiscal Activity may suspend or terminate collection action on debts of \$150 or less, in conformity with the standards.

[32 F.R. 4534, Mar. 25, 1967, as amended at 32 F.R. 13771, Oct. 3, 1967]

§ 13.203 Finality of decisions.

A decision by the Central Office Board or a field station Committee operating within the scope of its authority, denying waiver of all or a part of an overpayment is subject to appeal. There is no right of appeal from a decision rejecting a compromise offer or that a school is liable for the amount of an overpayment. [32 F.R. 4534, Mar. 25, 1967]

§ 13.204 Records and certificates.

The Chairman of the Board or Committee shall execute or certify any documents pertaining to its proceedings. He will be responsible for maintaining needed records of the transactions of his Board or Committee and preparation of any administrative or other reports which may be required.

[32 F.R. 4534, Mar. 25, 1967]

§ 13.205 Legal and technical assistance.

Legal questions involving a determination under § 2.6(d) (2) of this chapter will be referred to the Chief Attorney for action in accordance with delegations of the General Counsel, unless there is in existence a General Counsel's opinion or an approved Chief Attorney's opinion dispositive of the controlling legal principle. As to matters not controlled by § 2.6(d) (2) of this chapter, the chairman of the field station Committee or at his instance, a member, may seek and obtain advice from the Chief Attorney on legal matters within his jurisdiction and from other division chiefs in their areas of responsibility, on any matter properly before the Committee. Guidance may also be requested from the Central Office

[32 F.R. 4534, Mar. 25, 1967]

§ 13.206 Releases.

On matters within its jurisdiction, the Board or Committee may authorize the release of any right, title, claim, lien or demand, however acquired, against any person obligated on a loan guaranteed, insured, or made by the Veterans Administration under the provisions of 38 U.S.C. Ch. 37, or on an acquired loan, or on a vendee account.

[32 F.R. 4534, Mar. 25, 1967]

§ 13.207 Waiver—overpayments.

The term means payments made and determined to be erroneous, indebtedness resulting from services erroneously furnished and indebtedness of a veteranborrower who used his entitlement under the loan guaranty program or the indebtedness of his spouse, under laws administered by the Veterans Administration.

- (a) Benefits subject to waiver include indebtedness due the Veterans Administration because of or in connection with hospitalization, domiciliary care, or treatment of a veteran, a person who claimed he was a veteran, or a person to whom such benefits were granted on the assumption that he was an eligible veteran.
- (b) The following debts or overpayments are excluded from waiver under this section:
- (1) Pension, compensation, or retirement pay because of a return to active duty.
- (2) World War I adjusted compensation.

- (3) National Service Life Insurance resulting from an authorized change in option.
- (4) Overpayment to an insured from an insurance contract which is secured by a U.S. Government Life Insurance or National Service Life Insurance contract either in force or subject to being placed in force may not be waived as to moneys that become payable on account of such contract; however, in appropriate cases, the collection of such an overpayment from benefits other than insurance may be waived. (See § 13.212(b).)

(5) Servicemen's indemnity.

- (6) Overpayments due to forfeiture of benefits, except that where forfeiture was based on fraud, any portion of the overpayment which was not due to fraud may be waived.
- (7) Improperly negotiated checks issued after the death of a payee.
- (8) Amounts equal to amounts which have been recovered by the Veterans Administration prior to the date of receipt of the request for waiver. (See § 13.213.)
- (9) The indebtedness of an obligor under the loan guaranty program, other than the veteran-borrower who used his entitlement or the indebtedness of the veteran-borrower's spouse.

[32 F.R. 4535, Mar. 25, 1967]

§ 13.208 Waiver; other than loan guaranty.

- (a) General. Recovery of overpayments of any benefits (other than servicemen's indemnity and other benefits excluded under § 13.207(b)) made under laws administered by the Veterans Administration shall be waived if the person who received such overpayment was without fault, and recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience (38 U.S.C. 3102(a)).
- (b) Application. Request for waiver of an overpayment will be considered only if received within 1 year following the date of notice to the payee; otherwise, an application will be considered only if it is supported by new and material evidence.
- (c) Third persons. Waiver of recovery may be authorized, if warranted, where Veterans Administration payments have come into the possession of a person other than the person entitled. [32 F.R. 4535, Mar. 25, 1967]

§ 13.209 Waiver; loan guaranty.

- (a) General. An indebtedness of a veteran-borrower who used his entitlement, or the indebtedness of his spouse, may be waived in whole or in part only when all of the following factors are determined to exist:
- (1) There was a loss of the property which constituted security for the guaranteed or insured or direct loan; and
- (2) The default which resulted in the indebtedness arose out of compelling reasons, without fault on the part of the veteran: and
- (3) Collection of the indebtedness would work a severe hardship upon the veteran, or his family. However, waiver of the indebtedness of the veteran, or his spouse, may be granted where the indebtedness arose by reason of some fault on the part of the Veterans Administration and without fault on the part of the veteran, irrespective of the veteran's ability to pay.
- (b) Spouse. The waiver of a veteran's indebtedness shall inure to the spouse of such veteran insofar as concerns said indebtedness, unless the obligation of the spouse is specifically excepted. However, the waiver of the indebtedness of the veteran's spouse shall not inure to the benefit of the veteran unless specifically provided for in the waiver decision.
- (c) Widow. A widow of a veteranborrower may be granted a waiver of her indebtedness even though she may have a limited ability to repay the indebtedness without severe hardship provided that the income of the veteran-borrower, exclusive of his wife's income, was sufficient to qualify him for the original loan and no portion of her entitlement was used in obtaining the loan and, provided further, that the requirements of paragraph (a) (1) and (2) of this section are met.
- (d) Preservation of Government rights. In cases in which it is determined that waiver may be granted, the action will take such form (covenant not to sue, or otherwise) as will preserve the rights of the Government against obligors other than the veteran or his spouse.
- (e) Application. There is no time limit for filing an application for waiver of indebtedness.
- [32 F.R. 4535, Mar. 25, 1967, as amended at 32 F.R. 10436, July 15, 1967]

§ 13.210 Standards for waiver; other than loan guaranty.

Waiver of recovery of an overpayment may not be authorized unless it is established that the overpayment was not due to any fault on the part of the payee and, in addition, that recovery would defeat the purpose of the benefits otherwise payable or that recovery would be contrary to the principles of equity and good conscience. Determinations will be based on the facts in the individual case.

- (a) Fault. The payee will be considered to have been at fault where he knew, or by the exercise of reasonable care could have learned, that he was not entitled to the erroneous payment or payments. The fact that the overpayment may have been due in part to Veterans Administration error will not serve to mitigate the payee's responsibility. While there can be no balancing of faults, if there is reasonable doubt as to the fault of the payee, such doubt will be resolved in his favor.
- (b) Defeat the purpose. The purpose of the benefits program must be measured against the need of the payee. Generally, recovery may not be waived if this would result in a duplication of payments. The fact that recovery would require a temporary discontinuance of benefits does not in itself defeat the purpose of the benefit which would otherwise be payable.
- (c) Equity and good conscience. The generally accepted principles of equity will be applied. This includes protection against recovery of money mistakenly paid to a person who had an equitable but not a legal right, and impairment of position by reason of having received the payment. Inability to repay solely because the amount received has been expended is not in itself a ground for holding that recovery would violate equity and good conscience.

[32 F.R. 4535, Mar. 25, 1967]

§ 13.211 Standards for waiver; loan guaranty.

In order to determine that collection would work a severe hardship on the veteran or his family, it must be found that a severe hardship would result from both present and future collection by any means. In making this determination, consideration will be given to the present and anticipated income, general financial worth, and shelter and

necessary household expenses of the veteran and his spouse.

[32 F.R. 4535, Mar. 25, 1967]

§ 13.212 Scope of waiver decisions.

- (a) Decisions will be based on the evidence of record. A hearing may be held at the request of the claimant or his representative. No expenses incurred by a claimant, his representative, or any witness incident to a hearing will be paid by the Veterans Administration.
- (b) A field station Committee or Central Office Board may:
- (1) Waive recovery as to certain persons and decline to waive as to other persons whose claims are based on the same veteran's service.
- (2) Waive or decline to waive recovery from specific benefits or sources, except that:
- (i) There shall be no waiver of recovery out of insurance of an indebtedness secured thereby; i.e., an insurance overpayment to an insured. However, recovery may be waived of any or all of such indebtedness out of benefits other than insurance then or thereafter payable to the insured. See § 13 207(b) (4)
- able to the insured. See § 13.207(b) (4).

 (ii) There shall be no recovery, by withholding or setoff against benefits payable under laws administered by the Veterans Administration, of an indebtedness arising out of any loan under the loan guaranty program made to, assumed by, or guaranteed or insured on account of the debtor, unless the written consent of the debtor is first obtained.

[32 F.R. 4535, Mar. 25, 1967]

§ 13.213 Refunds.

- (a) Voluntary payments and offsets made from Veterans Administration benefits on or after the date of receipt by the Veterans Administration of a request for waiver will be refunded if waiver is granted, except as provided in paragraph (b) of this section.
- (b) Refund of payments made on a loan guaranty indebtedness will not be made when only a part of the debt is waived or when collection of the balance of the indebtedness by the Veterans Administration from obligors, other than the husband or wife of the person requesting waiver, will be adversely affected.
- (c) Voluntary payments and offsets from Veterans Administration benefits made prior to the date of receipt by the

Veterans Administration of a request for waiver will not be refunded and will be excluded from waiver.

[32 F.R. 4536, Mar. 25, 1967]

§ 13.214 Educational benefits.

- (a) General. The amount of an overpayment of educational assistance allowance or special training allowance on behalf of a veteran or eligible person constitutes a liability of the school if it determined that the overpayment was made as the result of (1) willful or negligent failure of the school to report. as required by § 21.4203 or § 21.4204 of this chapter, excessive absences from a course, or discontinuance or interruption of a course by the veteran or eligible person, or (2) false certification by the school. The amount of the overpayment may be recovered from the school in the same manner as any other debt due the United States. Any amount so collected from the school will be reimbursed if the overpayment is recovered from the veteran or eligible person. This provision does not preclude the imposition of any civil or criminal liability under this or any other law (38 U.S.C. 1785).
- (b) Reporting. If a school is required to make periodic or other certifications, failure to report facts which resulted in an overpayment will be considered prima facie evidence of willfulness or negligence. Similarly, the submission of an incorrect certification as to fact will be considered prima facie evidence of a false certification. In either instance the prima facie showing is subject to rebuttal.
- (c) Field station Committees. Unless jurisdiction is assumed by the Central Office Board, the field station Committee in the field station having jurisdiction over the area in which the school is located is authorized to find:
- (1) Whether recovery may be waived as to the veteran or eligible person.
- (2) If the overpayment is \$2,500 or less, liability of the school, or liability of both the school and the veteran or eligible person.
- (d) Extent of liability. Waiver of collection of an overpayment as to a veteran or eligible person will not relieve the school of liability for the overpayment. Recovery in whole or in part from the veteran or eligible person will limit such liability accordingly. If an overpayment has been recovered from the school and the veteran or eligible person subse-

quently repays the amount in whole or in part, the amount repaid will be reimbursed to the school.

- (e) Notice to school. If the school is found liable for an overpayment, the school will be notified of the decision and the right to request an administrative review of the decision within 60 days from the date notice of the decision is mailed to the school. The 60-day time limit may be extended to 90 days at the discretion of the Central Office Board. The request must be in writing, setting forth fully all of the contentions and errors assigned.
- (f) Administrative reviews. Administrative reviews will be conducted by the Central Office Board, whose decisions will serve as authority for instituting collection proceedings, if appropriate, or for discontinuing collection proceedings instituted on the basis of the original decision of the field station Committee in any case where the Central Office Board reverses a finding made by the field station Committee that the school is liable.
- (g) Review and modification. The Central Office Board may review and modify its decision upon submission of new and material evidence. The field station Committee will forward such evidence with its recommendation.
- (h) Finality of decisions. The Central Office Board has authority to act for the Administrator in making administrative reviews of determinations that a school is or is not liable for an overpayment to a veteran or an eligible person. There is no right of appeal to the Board of Veterans Appeals.

[32 F.R. 4536, Mar. 25, 1967]

§ 13.215 Revision of decisions; waiver and school liability.

- (a) Jurisdiction. (1) A decision involving waiver or school liability may be reversed or modified on the basis of new and material evidence, fraud, a change in law or interpretation of law specifically stated in a Veterans Administration issue, or clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered:
- (i) By the same or any other field station Committee if the decision was rendered by a field station Committee;
- (ii) By the Central Office Board if the decision was rendered or approved by that Board.
- (2) Decisions made prior to the creation of the Board and Committees by

§§ 13.200 through 13.217, may be reconsidered in accordance with subparagraph (1) of this paragraph by the present Board or Committee which would have jurisdiction if the matter was now for initial consideration.

(b) Finality of decisions. Except as provided in paragraph (a) (1) of this section, a decision involving waiver or school liability rendered by the Committee or Board having jurisdiction is final, subject to the provisions of:

(1) Sections 3.104(a), 19.153, and 19.154 of this chapter as to finality of decisions except as provided in § 13.214 (h):

(2) Sections 3.105 (a) and (b) of this chapter as to revision of decisions, except that the Central Office Board may postaudit or make an administrative review of any decision of a field station Committee;

(3) Sections 3.103, 19.113, and 19.114 of this chapter as to notice of disagreement and the right of appeal, except as provided in § 13.214(h);

(4) Section 19.124 of this chapter as to the filing of administrative appeals and the time limits for filing such appeals.

(c) Difference of opinion. Where reversal or amendment of a decision involving waiver is authorized by the Central Office Board under § 3.105(b) of this chapter because of a difference of opinion, the effective date of waiver will be governed by the principle contained in § 3.400(h) of this chapter.

[32 F.R. 4536, Mar. 25, 1967]

§ 13.216 Administrative reviews; Central Office Board.

Any decision of a field station Committee may be administratively reviewed at the request of the station head, or on the initiative of the Central Office Board. The request for review from a station head should be presented within 90 days from the date of the Committee's decision. The 90-day time limit may be extended at the discretion of the Central Office Board.

[32 F.R. 4536, Mar. 25, 1967]

§ 13.217 Standards for compromise, and suspension or termination of collection action.

Decisions of the Board or Committee respecting acceptance or rejection of a compromise offer, or grant or denial of suspension or termination of collection action shall be in conformity with the standards in § 1.900 et seq. of this chapter relative to compromise, suspension or termination of collection. In loan guaranty cases the offer of a veteran or other obligor to effect a compromise must relate to an indebtednes established after the liquidation of the security, if any, and shall be reviewed by the Committee or Board within its respective authority. An offer to effect a compromise may be accepted if it is deemed advantageous to the Government.

[32 F.R. 4536, Mar. 25, 1967]

§ 13.400 Legal services in other than guardianship and commitment matters.

The Chief Attorney is authorized to, and shall, under the professional guidance of the General Counsel, render legal advice and assistance to all Veterans Administration installations located in the regional office area and their top staff officers. (See §§ 13.401 and 13.402.) He may perform other legal services in matters within the jurisdiction of the General Counsel as provided by Veterans Administration regulations and instructions or as directed in specific cases by the General Counsel. In such cases communication shall be direct. (See § 14.500 et seq. of this chapter.)

[28 F.R. 5721, June 12, 1963]

§ 13.401 Legal advice and assistance in other than domestic relations matters.

(a) Directors of centers, hospitals or domiciliaries, Managers of centers or regional offices, and chiefs of divisions. should make written or oral requests for legal advice or assistance to the appropriate Chief Attorney; however, the inquiry shall be in writing, if the Chief Attorney so requests. Except as to matters referred to in § 13.402(b) (3), (4), and (5), the Chief Attorney's authority to render legal advice and assistance shall (unless otherwise instructed by the General Counsel), extend to the release, without prior approval of the General Counsel, of opinions on all legal questions which are either: (1) wholly controlled by the interpretation or application of the laws of the State or States in his regional office area, or (2) covered by Veterans Administration precedents and opinions of the General Counsel or his predecessors, which he knows to be currently authoritative on the issues involved. In the cases covered by § 13.402(b) (3), (4), and (5), and all

others not included in subparagraph (1) or (2) of this paragraph or paragraph (b) of this section a Chief Attorney will prepare a tentative opinion researched as completely as possible with reasonably available facilities and forward two copies direct to the General Counsel for review, with information copy to the Manager or Director concerned, if he so desires. No such tentative opinion will be released or acted upon unless approved by the General Counsel. General Counsel will advise the Chief Attorney of his action through the Department head concerned. The Chief Attorney will then conform his opinion (if necessary) to accord with the views of the General Counsel and release it as an approved opinion. However, if he prefers, he may release any modified opinion as the opinion of the General Counsel. Any necessary professional discussion of the contents of an opinion may be conducted by direct communication between the General Counsel and the Chief Attorney.

(b) Notwithstanding anything in this section or in § 13.402, the Chief Attorney may under special circumstances stated by him submit direct to the General Counsel any legal question, opinion, or question pertinent to his legal functions upon which he desires the views or advice of the General Counsel. His request (or opinion) in such cases will contain a statement of the legal implications involved (including any Veterans Administration benefits claimed), the facts out of which they arise, citation of and reference to any statutes or court decisions readily available, regulations, related opinions of the General Counsel and other matters deemed pertinent, with appropriate discussion. If any Department head will be affected, the reply will be released through him.

[28 F.R. 5721, June 12, 1963]

§ 13.402 Domestic relations questions, authority and exceptions.

(a) The Chief Attorney has the same authority with respect to domestic relations questions as he does with respect to matters covered by § 13.401 (with the exception of the matters specifically excluded by the provisions of paragraph (b) of this section). He will accordingly prepare and release (when authorized) or forward (if required) opinion, as provided in § 13.401(a), or submission (or opinion), as provided in § 13.401(b), on all legal questions properly submitted

relating to the validity and legal effect of marital relationships, ceremonial or otherwise, divorces, annulments (void or voidable), ostensible marriages and remarriages, adoptions and legitimacy.

- (b) In the following instances the Chief Attorney will, whether or not State law is wholly controlling or a Veterans Administration precedent available, prepare a tentative opinion, researched as completely as possible with reasonably available facilities, and forward two copies thereof direct to the General Counsel for review and disposition (as provided in § 13.401 respecting other than domestic relations matters):
- (1) Where it is not clear under applicable State law (i) whether the marriage of a veteran's child or the remarriage of a veteran's widow was void without decree of annulment, or (ii) whether an annulment decree was rendered by a court with basic authority to render annulment decrees;
- (2) When fraud by either party, or collusion, appears to have influenced the granting of an annulment decree;
- (3) Cases in which there are contesting claims;
- (4) Unusual situations, such as those involving proxy marriages, the law of two or more jurisdictions, or of a foreign country:
- (5) Cases involving difference of opinion between Chief Attorneys or between a Chief Attorney and the official who submitted the question involved.

[28 F.R. 5722, June 12, 1963]

§ 13.500 Apportionment for dependent parents and payment of maintenance charges under 38 U.S.C. 3203, as amended by Public Law 86-146.

- (a) Use of veteran's funds. When payment has been discontinued under Public Law 86-146 because the estate of a hospitalized incompetent veteran having no wife or child equals or exceeds \$1500, it is intended that the veteran's needs and those of his dependents be provided out of his funds whether in the possession of his guardian, in Personal Funds of Patients or elsewhere to the extent practicable.
- (b) Delegation of authority. Chief Attorneys are delegated authority to authorize release of funds from Personal Funds of Patients for the needs of veterans and their dependents including amounts fixed by statute or valid administrative regulations as the cost of current maintenance of veterans in public

institutions other than Veterans Administration institutions.

(c) Use of personal funds of patients. When the amount of benefits otherwise payable is inadequate for the needs of a dependent parent or parents, the Chief Attorney may recommend the release from Personal Funds of Patients of any sums required to supplement the apportionment. (Instruction 2, title 38 U.S.C. chapter 55, Public Law 86–146) [25 F.R. 2163, Mar. 16, 1960]

PART 14—LEGAL SERVICES, GENERAL COUNSEL

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